

Attorney Docket:
33808 F 131

would not be substantially burdensome after a search for the claims in Group I, as all the claims involve the combination of the M and B polymer components.

A search for the subject matter in Group I is inextricably intertwined with the subject matter in the claims of Group II and III. Any full and complete search for the claims in Group I will necessarily yield the relevant art for consideration and examination of the claims in Groups II and III. Hence an extension of the search required for Group I to all the claims in the remaining Groups II and III would not be burdensome. See MPEP 804.

Furthermore, the grounds given as a basis for the restriction requirement on Page 2 of the Office Action dated October 1, 2001 is not well placed. For instance, the Office Action sets forth that the inventions of Groups I and II or III are related "as mutually exclusive species in an intermediate-final product relationship." This characterization is not accurate. The claims of Group I include both M and B components but are also open to including other elements such as C or D. Accordingly, the different groupings are not mutually exclusive. Also, each of Groups I, II and III relate to final-product compositions, and not intermediate compositions.

A review of the U.S. PTO Manual of Patent Examination Procedure will reveal that a better characterization of the relationship among Groups I and II or III might involve characterization as Combination-Subcombination. A two-way showing of distinctness

would be required to establish distinction under a Combination-Subcombination relationship, but no two-way distinction has been, or can be shown.

Accordingly, the basis for Restriction is not adequately established; a search for all the claims is not burdensome; and maintaining this Restriction Requirement will impose undue expense on Applicants in prosecuting multiple applications, otherwise examinable together according to U.S. PTO Patent Examining Procedure. In addition, maintaining this Restriction Requirement may result in undue delay toward issue of some claims in this application, resulting in a significant loss in patent term to Applicants.

ELECTION OF SPECIES

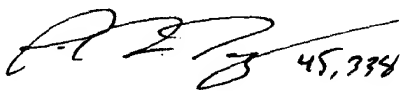
In response to the Election of Species Requirement, also called for in the Office Action dated October 1, 2001, Applicants respectfully direct the Examiner's attention to Example 3, as listed in Table 1 at page 17 of the Written Description. Applicants elect the components in Example 3 for initial search and examination. At the same time, Applicants further direct the Examiner's attention to the substantial and unexpected improvement in Notched Charpy Impact Strength disclosed for Example 3 in that Table.

Reconsideration and Rejoinder of all the claims is respectfully requested prior to examination on the merits. This Election is made with traverse, and solely for compliance under 37 CFR 1.143 in order to preserve pendency in this application.

If any fees are due in connection with the filing of this Response, such as fees under 37 C.F.R. §§1.16 or 1.17, the Commissioner is authorized to charge Deposit Account No. 02-4300; Order No. 033808.131. Similarly, please credit any overpayment Deposit Account No. 02-4300; Order No. 033808.131.

Respectfully submitted,

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